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October 12, 1995

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BY HAND

Mr. William F. Caton, Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Petition for Reconsideration in  
CC Docket No. 92-115 -- Ex Parte Presentation

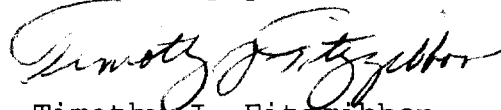
Dear Mr. Caton:

This is to provide notice, pursuant to Section 1.1206 of the Commission's Rules, that the undersigned, as counsel for C-Two Plus Technology, Inc. ("C2+"), met yesterday with Daniel B. Phythyon, Senior Legal Advisor to the Chief of the Wireless Telecommunications Bureau, and Jane Hinckley Halprin, Legal Advisor to the Bureau's Commercial Wireless Division.

The matters discussed were those contained in C2+'s Petition for Reconsideration, other submissions in the record, and the attached documents. An original and two copies of this notice and the attachments are being submitted.

If you have any questions regarding this matter, please contact me.

Very truly yours,



Timothy J. Fitzgibbon  
Counsel for  
C-Two Plus Technology

TJF:kdd  
Enclosures

cc: Daniel B. Phythyon, Esquire (w/encl.)  
Jane Hinckley Halprin, Esquire (w/encl.)

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## United States District Court

EASTERN

DISTRICT OF  
LEXINGTON

KENTUCKY

UNITED STATES OF AMERICA  
V.

## SUMMONS IN A CRIMINAL CASE

DON YATES  
923 Jairus Road  
Lexington, KY 40505

CASE NUMBER: 95-5108M

(Name and Address of Defendant)


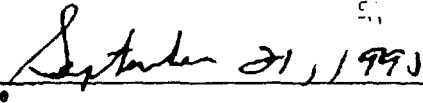
YOU ARE HEREBY SUMMONED to appear before the United States District Court at the place, date and time set forth below.

Place	United States Courthouse 101 Barr Street Lexington, KY	Room	Courtroom C Fourth Floor
Before:	Magistrate Judge James B. Todd	Date and Time	September 29, 1995 9:00 a.m.

To answer a(n)

☐ Indictment    ☐ Information    ☒ Complaint    ☐ Violation Notice    ☐ Probation Violation PetitionCharging you with a violation of Title 18 United States Code, Section(s) 1029

Brief description of offense: possession and trafficking in device making equipment

RECORDED  
UNITED STATES DISTRICT COURT  
SEP 29 4 38 PM '95  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE  
LEXINGTON, KENTUCKY  
Signature of Issuing Officer  
DateJames B. Todd, U.S. Magistrate Judge  
Name and Title of Issuing Officer

# United States District Court

Eastern DISTRICT OF Kentucky  
Lexington

Eastern District of Kentucky

FILED

SEP 21 1995

JAMES B. TODD  
U.S. MAGISTRATE JUDGE

UNITED STATES OF AMERICA  
V.

## CRIMINAL COMPLAINT

Don Yates  
923 Jairus Road  
Lexington, Kentucky 40505

CASE NUMBER: 95-51087

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about 9/18/95 in Fayette county, in the

Eastern District of Kentucky defendant(s) did, (Track Statutory Language of Offense)  
did knowingly and with intent to defraud, produce, use and traffic in one or more counterfeit access devices; knowingly and with intent to defraud, produce, traffic in, had control and custody of, and possessed device-making equipment; and knowingly and with intent to defraud had custody, control and possession of hardware used for altering and modifying telecommunications instruments to obtain unauthorized access to telecommunications services; all affecting interstate and foreign commerce.

in violation of Title 18 United States Code, Section(s) 1029 (a)(1), (a)(4), (a)(6)(B)

I further state that I am a(n) Special Agent - USSS and that this complaint is based on the following

Official Title

facts: (See Attached Affidavit of SA James W. Cobb)

Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No

Signature of Complainant James W. Cobb  
U.S. Secret Service

Sworn to before me and subscribed in my presence,

Date

September 21, 1995

at

Lexington, Kentucky  
City and State

Name & Title of Judicial Officer  
James B. Todd  
U.S. Magistrate Judge

Signature of Judicial Officer

Eastern District of Kentucky  
FILED  
JUN 21 1964  
JAMES B. TODD  
U.S. MAGISTRATE JUDGE

4. That on August 16th, 1995, your complainant interviewed Dan Ambrosini, Cellular One, 124 Keeneland Dr., Richmond, Ky. Ambrosini had previously telephoned the U.S. Secret Service in Lexington, Ky. to complain about a Don Yates who was using an illegally obtained "black box" to reproduce the telephone numbers and electronic serial numbers of previously issued telephones. Ambrosini stated that Yates has started a business wherein he charges customers one hundred and fifty dollars (\$150) to duplicate ("clone") the telephone numbers and electronic serial numbers, belonging to their original cellular telephones, into additional telephones thereby avoiding the activation fees and monthly service fees for

each additionally cloned phone. These monthly service fees include a one time activation fee of \$35 per each additional cellular telephone, along with monthly service fees ranging between \$25 and \$150. Ambrosini advised that the actual loss in dollars to the cellular telephone industry is unknown to date due to their inability to differentiate between calls made on the originally purchased telephone and any phone "cloned" by Don Yates. Ambrosini added that the telephone numbers and electronic serial numbers that are issued to their customers are the property of the cellular carrier, not the customer themselves, and that these numbers are used to facilitate calling and tracking for billing purposes.

Ambrosini advised that customers using a cellular telephone with a telephone number and an electronic serial number can obtain telephone service throughout the United States.

5. That on September 13th, 1995 SA James Burch, United States Secret Service, telephoned Don Yates at 606-272-1440. SA Burch, acting in an undercover capacity, questioned suspect Yates about the procedures involved with obtaining a "cloned" phone and also inquired about the costs involved. SA Burch told me that Yates stated he could duplicate the telephone number of his (Burch's) cellular telephone onto additional cellular telephones wherein the cellular system would only "see" the original phone as being used. Yates stated that the only fee would be a one time programming fee to him. Yates stated that although he (Burch) would have to pay the carrier for the additional air time generated by the second phone, he would not have to pay for any extra additional charges on a monthly basis for having additional cellular telephones. Yates told Burch he operates his business out of a van and would meet him when Burch was ready to "clone" cellular telephones.

6. That on September 18th, 1995 Cellular One Communications, Richmond, Ky. provided two cellular telephones to the U.S. Secret Service for use in an undercover transaction with Mr. Yates. In a signed sworn affidavit, Cellular One Technician John Herbst stated that the first phone, a Motorola "M" series telephone, mechanical serial number F09LFD8438AG, was programed with electronic serial number 0262DD8D and telephone number 606-544-5592. Herbst further stated that the second telephone, a Motorola "DCP 550" series cellular telephone, mechanical serial number F09HLD8415EG, was programed with electronic serial number C34015C8 and contains no telephone number (Mobile Identification Number).


7. That later on September 18th, 1995 an undercover meeting was arranged between SA James Burch and suspect Don Yates.

SA Burch told me that during this meeting, Don Yates took both of the aforementioned cellular telephones from him, recorded the telephone number (from the previously programed "M" series telephone), by turning on the telephone,


and the electronic serial number, which is listed on the rear of that same telephone, and then transferred those numbers to the previously blank telephone by connecting this second telephone, via a patch cord, to a black box located in his briefcase. Yates then keyed in the unauthorized telephone number and electronic serial number by using a key pad on the front of the copycat "black box". Yates then tested the "cloned" telephone to ensure its operation. Upon completion of this process, Burch asked Yates how much he owed him for this service and Yates replied \$150. Burch then provided this amount in cash.

8. That on 9/21/95 the aforementioned cellular telephones, previously programed and provided by Cellular One Technician John Herbst, and subsequently "cloned" by Don Yates, were again analyzed by Mr. Herbst at Cellular One Communications, Richmond, Ky. Following his examination of the subject second cellular telephone, the Motorola "DCP 550", Herbst stated that this telephone, which previously contained no telephone number and had an E.S.N. of C34815C8, now contained telephone number 606-544-5592 and an E.S.N. of 8262DD8D. These two numbers were previously programed into the Motorola "M" series telephone with was provided to Don Yates by SA James Burch as his legitimately purchased cellular telephone.

FURTHER COMPLAINANT SAYETH NOT.

  
James Cobb  
Special Agent  
United States Secret Service

SUBSCRIBED AND SWORN to before me this 21<sup>st</sup> day of Sept., 1995

  
United States Magistrate

# Cellular phone tampering alleged

SCOTT CARLSON STAFF WRITER

One of Minnesota's biggest providers of mobile phone services, AT&T Wireless Services, is suing a Wayzata business for alleged cellular phone tampering.

The Minneapolis office of AT&T Wireless, a division of American Telephone and Telegraph Co., is seeking a permanent injunction to prevent Cell Phone Extensions from allegedly "cloning" the electronic serial numbers of cellular phones.

Cell Phone Extension's suspected owner or operator, Dave Wesley of Minnetonka, could not be reached for comment Friday. A recording at Cell Phone Extensions said the company's voice mail box was "full."

According to the AT&T Wireless lawsuit, every cellular telephone is made with a unique electronic serial number. When a cell phone call is placed or received, the cellular phone transmits its ESN, allowing the cellular service provider to identify the subscriber and track the call for billing purposes.

"It is possible, albeit unlawful, to alter or 'clone' a cellular phone's ESN to 'emulate' the ESN of a different phone," the suit notes. "Cloning cellular phones to emulate the ESNs of legitimate phones belonging to unsuspecting cellular subscribers allows criminals to steal millions of dollars' worth of cellular services each year."

Hugh Plunkett III, an attorney for AT&T Wireless, said legitimate cellular customers can receive bills for thousands of dollars of cellular services if someone has "cloned" their phone's electronic serial number. "I know an attorney who got a bill for \$15,000 on a one-month period of time," he said.

But the telephone companies generally absorb the loss if legitimate cellular phone users say they have been overcharged, Plunkett said.

Meanwhile, the lawsuit states, "Cloning is also used to create unauthorized and illegal 'extension' phones for otherwise legitimate cellular subscribers by altering one or more more phones to emulate the ESN of the customer's authorized phone."

When that happens, telephone companies are cheated of service charges they normally collect on additional phones, Plunkett said.

AT&T Wireless recently won a temporary injunction in U.S. District Court in St. Paul authorizing the U.S. marshal's office to seize Cell Phone's business records. But the plaintiffs haven't located Wesley to serve him with the lawsuit, so a U.S. marshal has yet to conduct the search and seizure, Plunkett said.

Roseanna de Maria, AT&T Wireless corporate vice president of revenue security, said that illegal cellular cloning is a nationwide problem that last year cost U.S. telephone companies an estimated \$485 million in lost revenue.

But backed by strong federal laws that make cellular cloning a crime, the industry has been going to court to sue violators for the fraud, de Maria said. Phone companies have filed lawsuits in several other cities, including New York, Houston and St. Louis, she said.

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